

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, EASTERN DIVISION

SHIRLEY McBRAYER FLOOD, as)	
PERSONAL REPRESENTATIVE of)	
THE ESTATE OF DAVID DANIEL)	
McBRAYER, deceased)	
)	
Plaintiff)	
)	Case No. 1:16-cv-1832-ACA
)	
CITY OF JACKSONVILLE,)	Hon. Annemarie C. Axon presiding
ALABAMA,)	
)	
Defendant)	

JOINT RESPONSE TO COURT'S ORDER (DOC. 89)

Come now the Plaintiff, Shirley McBrayer Flood as Personal Representative of the Estate of David Daniel McBrayer, and the Defendant, the City of Jacksonville, which/who respectfully respond to this Court's order of March 28, 2019 (Doc. 89), as follows:

1. In reviewing the video evidence submitted in this case, this Court noted that the two videos lack sound for the first thirty seconds of each recording. (Doc. 89.) Accordingly, the parties were directed to "confer and, on or before April 4, 2019, jointly resubmit the videos verifying that the sound works, or, if there is no sound for any part of the videos, identifying those parts and certifying that the videos are supposed to be silent at those points." (*Id.*)

2. The parties hereby certify, consistent with the attached affidavit of Gerald Wineman, that (1) the sound works on the videos, (2) there is no sound for the first thirty seconds of the videos, and (3) the videos are supposed to be silent at those points due to the normal operation of the Axon Flex camera system used by the involved Jacksonville officers on November 11, 2014.

Respectfully submitted,

/s/ U.W. Clemon

One of the Attorneys for Plaintiff

OF COUNSEL

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Respectfully submitted,

/s/ C. David Stubbs

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2014 and its operation and functioning. I have also reviewed the body camera footage of Officers Edwards and Tomlinson that was captured on November 11, 2014 and that has been submitted to this Court. That body camera footage does not have audio for the first thirty seconds of each video.

5. On November 11, 2014, the Jacksonville Police Department used the Axon Flex System, a camera system manufactured by Taser International. Both Officer Edwards and Officer Tomlinson were using the Axon Flex System cameras at the time of the shooting of David Daniel McBrayer.

6. The Axon Flex System has two operating modes. The default mode, or “buffering” mode provides pre-event buffering to capture activities that occur prior to the user activating the “event” mode. Because the system does not capture audio in “buffering” mode, the first 30 seconds of a recorded event will be video-only.

7. Therefore, the reason why there is no audio for the first thirty seconds of each video in this case is due to the normal operation and functioning of the body cameras. The videos provided in this case to legal counsel for the City, and also provided to counsel for the Plaintiff, to the best of my knowledge are not flawed.

FURTHER AFFIANT SAYETH NOT.

Gerald Wineman
GERALD WINEMAN

VERIFICATION

STATE OF ALABAMA)
)
CALHOUN COUNTY)

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared GERALD WINEMAN, whose name is signed to the foregoing Affidavit and who is known to me, and acknowledged before me this day that, being informed of the contents of the Affidavit, the foregoing are true and correct to the best of his knowledge and he executed the same voluntarily on the day the same bears date.

SWORN TO and SUBSCRIBED before me on this the 2nd
day of April, 2019.

Denise Kitchens
Notary Public
MCE: 09/23/2019

